

September 22, 2006

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

400 Yesler Way, Room 404  
Seattle, Washington 98104  
Telephone (206) 296-4660  
Facsimile (206) 296-1654  
Email: [hearex@metrokc.gov](mailto:hearex@metrokc.gov)

**REPORT AND DECISION**

SUBJECT: Department of Development and Environmental Services File No. **E0500199**

**JAMES G. BROWN**  
Code Enforcement Appeal

Location: 7454 South 118th Place, Seattle

Appellant: **James G. Brown**  
7454 South 118th Place  
Seattle, Washington 98178  
Telephone: (206) 713-3895

King County: Department of Development and Environmental Services,  
*represented by* **Steve Horswill**  
900 Oakesdale Avenue Southwest  
Renton, Washington 98055-1219  
Telephone: (206) 296-7157  
Facsimile: (206) 296-6604

**SUMMARY OF DECISION/RECOMMENDATION:**

Department's Preliminary Recommendation:	Affirm Notice and Order compliance requirements
Department's Final Recommendation:	Affirm Notice and Order compliance requirements
Examiner's Decision:	Sustain appeal; vacate notice and order

**EXAMINER PROCEEDINGS:**

Hearing Opened:	August 2, 2006
Hearing Closed:	August 2, 2006

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.  
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS OF FACT:

1. On May 26, 2006, the King County Department of Development and Environmental Services (DDES) issued a Notice and Order to James G. Brown that alleged code violations at property located at 7454 South 118th Place in the unincorporated Skyway area. The Notice and Order cited Brown and the property with one violation of county code:
  - (a) Conversion of a garage into an accessory dwelling unit without the required permits, inspections and approvals in violation of the building and zoning codes.

The violation was required by the Notice and Order to be corrected by cessation of occupancy of the cited garage structure as a dwelling unit by July 26, 2006 and to convert the structure “back to the approved use of a detached garage” by such date, or apply for and obtain the required permits, inspections and approvals “for an allowed use in the zone” with the application to be submitted by July 11, 2006. Alternatively, the applicant was informed by the Notice and Order that the allegedly non-permitted construction could be demolished.
2. Mr. Brown filed a timely appeal of the Notice and Order, making a variety of claims:
  - (a) Mr. Brown committed no violation as cited in the Notice and Order.
  - (b) The allegation of violation is based on code provisions which post date the existence of the structure by approximately 50 years.
  - (c) DDES bases its Notice and Order on a single unreliable Assessor record.
  - (d) Conversion to an accessory dwelling unit did not occur.
  - (e) The alleged dwelling unit does not meet the definition of a dwelling unit under KCC 21A.06.345, because it lacks a kitchen or kitchen facility as defined in KCC 21A.06.662.
3. DDES presents as evidence of the presence of an illegal accessory dwelling unit within the cited garage structure the following:
  - (a) The presence of a “man” door on the left side of the garage front, adjacent to a single-width garage door placed on a structure which is sizeable enough for a two-car garage and in some entries in county Assessor’s records is described as a two-car or double garage.
  - (b) No permits have been issued for an accessory dwelling unit within the structure.
  - (c) No separate address has been established for such accessory dwelling unit.
  - (d) The Assessor has never identified the presence of an accessory dwelling unit within the subject structure and the structure is “not recognized as such by the Assessor”; and

- (e) The presence of the man door “seems to indicate” the presence of an accessory dwelling unit.

DDES also expresses concerns about building code compliance and safety associated with the occupancy of the cited garage structure as an accessory dwelling unit.

4. The Appellant testified that there is no kitchen within the garage structure, testimony which has not been refuted in the hearing record.
5. DDES has not made a *prima facie* case of the cited code violation in this matter. The preponderance of the evidence in the record is insufficient to find as a fact the conversion of a portion of the garage (or all of it, for that matter) into an “accessory dwelling unit” as charged in the Notice and Order. In order to constitute a dwelling unit as such term is established in King County land use regulations, a building area in question must contain kitchen facilities, among other things. [KCC 21A.06.345] There is no evidence in the record demonstrating that the garage contains kitchen facilities and thus constitutes a defined separate dwelling unit. The Appellant’s testimony that there is no kitchen within the cited structure is unrefuted. (It should be noted that the violation charge is not conversion into “accessory living quarters,” a different land use classification than “dwelling unit” or “accessory dwelling unit.” [KCC 21A.06.010, 21A.06.345 and 21A.06.350] It may or may not be that conversion or other establishment of accessory living quarters has occurred onsite, but that is not what is charged by the Notice and Order.)
6. All of the DDES evidence presented in support of its charge in the Notice and Order is circumstantial, conclusory, and weak at best. The presence of a “man” door rather than a typical garage door is not persuasive of the presence of an “accessory dwelling unit” in the structure. Such different types of doors are not uncommon in multi-use accessory structures such as a garage/workshop building or a garage/storage building, or combinations with home offices, studios, etc. From the evidence in the record, the cited structure is indistinguishable from a structure containing a garage and an accessory workshop, storage, office or studio component. Reliance on Assessor records is problematic in that the Assessor’s role is to assess valuation and not to document land use definitively under zoning code definitions, and its records seem often based on cursory review of the definitive use of structures and utilize different terminology for different purposes than code enforcement. In this case, the presented evidence from Assessor records is in no way dispositive of the alleged code violation.
7. In short, from the evidence provided into the record, DDES’s case in support of the Notice and Order is only speculative and conclusory. In the final analysis, the DDES case is insufficiently fact-based for the Notice and Order to be sustained.

#### CONCLUSION:

1. The charge of violation in the Notice and Order has not been supported sufficiently by the evidence in the record and is therefore not sustained. The Notice and Order shall be reversed and vacated. (The parties should be on notice that if the matter is the subject of future enforcement action, the side issue of non-conforming use qualification, which need not be decided here since the *prima facie* case was not made, must be considered in light of the fundamental legal requirements under Washington case law that a) the burden of proof associated with the assertion of a non-conforming use lies on the party making the assertion, and b) any disputation of the continuity of an established non-conforming use lies on the party asserting discontinuity for the applicable time period.)

## DECISION:

As DDES's *prima facie* case for the charged violation is not supported by the evidence in the record, the appeal is SUSTAINED. The Notice and Order is accordingly REVERSED and VACATED.

ORDERED this 22nd day of September, 2006.

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Peter T. Donahue, Deputy  
King County Hearing Examiner

TRANSMITTED this 22nd day of September, 2006 via certified mail to the following:

James G. Brown  
7454 South 118th Place  
Seattle, Washington 98178

TRANSMITTED this 22nd day of September, 2006, to the following parties and interested persons of record:

James G. Brown  
7454 S. 118th Pl.  
Seattle WA 98178

Steven D. Cline  
P O Box 1201  
Vashon WA 98070

Edward Landin  
31600 - 124th Ave. SE  
Auburn WA 98032

Deidre Andrus  
DDES/LUSD  
MS OAK-DE-0100

Steve Horswill  
DDES/LUSD  
MS OAK-DE-0100

Amber Lee  
DDES, Code Enforcement  
MS OAK-DE-0100

Lamar Reed  
DDES/LUSD  
MS OAK-DE-0100

Toya Williams  
DDES/LUSD  
MS OAK-DE-0100

**NOTICE OF RIGHT TO APPEAL**

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE AUGUST 2, 2006, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT  
AND ENVIRONMENTAL SERVICES FILE NO. E0500199.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing was Steve Horswill, representing the Department; James G. Brown, the Appellant, Edward Landin and Steven DeFoe Cline.

The following Exhibits were offered and entered into the record:

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|---------------------------------|--|
| Exhibit No. 1                   | DDES staff report to the Hearing Examiner  |
| Exhibit No. 2                   | Copy of the Notice and Order   |
| Exhibit No. 3                   | Copy of the Appeal to the Notice and Order   |
| Exhibit No. 4                   | Copies of codes cited in the Notice and Order  |
| Exhibit No. 5                   | Copies of violation warning letters  |
| Exhibit No. 6                   | Copies of the King County Tax Assessor records   |
| Exhibit No. 7                   | Photographs (2) (1 dated April 7, 2005, taken by Jeri Breazeal; 1 dated September 6, 2005 taken by Steve Horswill) |
| Exhibit No. 8-1<br>thru<br>8-12 | Photographs of residence and mother-in-law   |
| Exhibit No. 9                   | Letter from Ed Landin dated September 8, 2005  |
| Exhibit No. 10                  | Letter from Steve Cline dated September 7, 2005  |
| Exhibit No. 11                  | King County Tax Assessor record  |
| Exhibit No. 12                  | Email string from James Brown  |

PTD:gao  
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